

Enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale. 86 Ill. Adm. Code 270.115(a)(1). (This is a PLR.)

December 6, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 15, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, COMPANY, we respectfully request the Illinois Department of Revenue ("Department") issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation. This is a follow up private letter ruling request to a general information letter received from the Department, dated January 26, 2000 (ST00-0020-GIL).

General Information

Enclosed please find an original Form IL -2848 Power of Attorney, authorizing FIRM to represent COMPANY before the Illinois Department.

This Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax consequences of the actual business practice of the Company.

The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter.

To the best knowledge of the Company's personnel, and to the best of our knowledge, the Department has not previously ruled regarding this matter for the Company. Neither the Company nor we have, at any time prior, submitted the same or similar issue to the Department, except for the earlier mentioned letter ruling request answered in a general information letter on January 26, 2000 (ST00-0020-GIL).

The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, and the name of its representative be deleted.

Statement of Material Facts

The Company is engaged in the business of selling (at retail) computers and related equipment to other businesses. The Company's headquarters ("Office A") is located in ("City A"), Illinois and is within a Home Rule jurisdiction that imposes a Municipal Retailers Occupation Tax (HRMROT). The Company's internal computer programs that handle order entry, billing, and accounts receivables are maintained on servers located at Office A. Additionally, the billing and receivables personnel work from Office A. The Company maintains a sales office in Illinois ("Office B") located in ("City B"), Illinois. City B currently imposes a 1% HRMROT. The Company has "centralized" its order acceptance activities in Office B.

The Company generally makes sales to third parties in two fashions:

1. Single Contract. A customer wishing to purchase equipment from the Company can request pricing information from the Company's sales organization. The Company's personnel located in Office A, perform the credit review and, once credit is approved, prepare a fee quote and proposal letter outlining the details of the proposed transaction. The fee quote clearly states that the terms of the proposal are subject to approved by the Company's senior management. If the customer agrees to the terms outlined in the proposal, it submits the signed proposal to the Company's Office A.

Upon receipt of the signed proposal, the Company prepares a sales contract outlining the agreed terms of the transaction (copy attached as Exhibit A). The sales contract is forwarded to an authorized member of the Company's senior management team. The senior manager reviews the contract and if in agreement with the terms, signs the sales contract. The signed sales contract is then sent to the customer. The signed sales contract represents the Company's complete and unconditional offer to sell the designated property to the customer and, by operation of law (Article 2 of the Uniform Commercial Code), becomes a binding contract upon acceptance by the customer. Acceptance may be effected only by an authorized officer, employee, or agent of the customer signing the original document and returning it to the Company. See Section 10.E. of Sales Agreement, Exhibit A.

Upon receipt of the signed contract from the Company, the customer reviews the contract, and if the terms are acceptable, signs and returns the contract to Office B via US Mail or facsimile. Upon receipt of the signed contract by the Company Representative at Office B in City B, the customer acquires a legal right to the specified

goods. Receipt of the signed contract is the final action necessary to bind the Company to the sale. The Company's personnel in Office B receive the contract, log its receipt and forward the contract to Office A where the order is released and the equipment is ordered from the manufacturer for delivery to the customer's location.

In certain instances, the Company prepares, issues and signs a proposal to the customer. A proposal issued and signed by the Company, contains the sale terms and conditions and serves as the contract itself. If the customer is in agreement with the proposal, it signs the proposal and then submits the signed proposal letter (a contract in this instance) to the Company at Office B where upon receipt it becomes a binding contract.

2. Master Contract. For certain customers, the Company has also entered into Master Sales Agreements (copy attached as Exhibit B), or master Terms and Conditions of Sale Agreements. (Copy attached as Exhibit C). The signed Master Sales Agreements and master Terms and Conditions of Sale Agreements (together referred to as "Master Agreements") are submitted by the customer to Office A where they are kept on file. Thereafter, when a customer under a Master Agreement wishes to acquire specific equipment, a quote or price list is provided to the Customer by the Company. The Customer then prepares a purchase order, referencing the Master Agreement, and submits the purchase order to the Company at Office B. The purchase order represents the customer's acceptance of the Company's complete and unconditional offer to sell the items identified on the purchase order (as taken from the quote or price list) under the terms outlined in the Master Agreement. Each purchase order is recognized as a separate sales agreement subject to the terms of the Master Agreement.

In lieu of a purchase order, the Company may send out a signed commitment letter to the customer, referencing the Master Agreement. If the Customer agrees with the letter, the Customer will sign it and submit it, like a purchase order, to the Company at Office B (copy attached as Exhibit D). The commitment letter when signed by the Customer represents the Customer's acceptance of the Company's complete and unconditional offer to sell the items identified therein under terms outlined in the Master Agreement.

When a conforming purchase order or commitment letter is received by the Company's personnel in Office B, it becomes a final and binding Sales Agreement "without further action by either party." Section 1 of Master Equipment Sales Agreement, Exhibit B, and Section 1(b) of Terms and Conditions of Sale Agreement, Exhibit C. After receipt in Office B, the purchase order or commitment letter is logged in as received and forwarded to Office A where the order is released for processing and billing.

Opinion Requested

1. The receipt by the Company at Office B of a customer's acceptance of the Company's signed sales contract or signed proposal at Office B conclusively establishes Office B as the situs of such sale for Illinois and local Retailers' Occupation Tax ("ROT") purposes such that the state and local tax rate in effect in City B applies to the sale.

2. The receipt of purchase orders or commitment letters at Office B that are related to the Master Agreements, conclusively establishes Office B as the situs of such sales for Illinois and local ROT purposes.

Relevant Authorities

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, Metro East Transit District, and Special Purpose County Retailers' Occupation Taxes. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill. 2d 53, 18 Ill. 2d, 496, 165 N.E.2d 305, 387 N.E.2d 320 (1979), *cert. Denied*, 444 U.S. 844, 62 L. Ed. 2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or *other contracting action in the making of the sales contract the most important single factor* in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an acceptance of the seller's complete and unconditional offer to sell* is received by the seller's place of business or by someone working within a municipality that imposes HRMOT, the seller incurs HMROT liability in that jurisdiction. (86 Ill. Admin. Code Sec. 270.115).

Using identical language, the regulations state:

“Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, **or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.**”

The Regulations further state that:

“Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.”

In addition, the Department has issued several rulings on this matter involved taxpayers with similar order acceptance procedures. These rulings indicate that the receipt of the

customer's acceptance of the seller's complete and unconditional offer to sell at Office B conclusively establishes the situs of the sale in City B and, consequently, City B's HRMROT applies to the Company's sales.

In PLR 81-1566, the Department ruled that the Regional Transportation Authority ROT applied "if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business . . . or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois."

PLR 82-0405 also indicates that "if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois."

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in DeKalb County, the Department ruled that "assuming that the purchase orders are accepted at the taxpayer's place of business within the City of DeKalb, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the City of DeKalb if the sale is at retail and the purchaser receives the physical possession of the property in Illinois."

In PLR 90-0857, the Department states that "in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule municipality or salespersons who accept purchase orders for your company in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the DuPage County Water Commission Tax and the like." Rather the Department determined that "the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability."

More importantly, as previously mentioned, the Company received a general information letter from the Department. dated January 26, 2000 (ST00-0020-GIL) on this exact same issue. In that letter the Department acknowledged that the Company was correct in its understanding of the law based on the facts provided, which are substantially the same as stated herein. Since then, the Department has continued to

issue private letter rulings that consistently reach the same conclusion. In ST03-0007-PLR (March 11, 2003), the Department again acknowledged that the receipt by a Seller at the Seller's office in the CITY, of the Buyers' acceptance of the Seller's offer to sell, resulted in the sale occurring in such CITY for Illinois and local Retailers' Occupation Tax purposes. See similarly ST02-003-PLR (Dec. 19, 2002); ST01-0003-PLR (Feb. 2, 2001).

The Company knows of no authority contrary to the above cited authorities.

Conclusion

The facts indicate that (i) Company's sale contracts or proposals are not binding on the Company until the signed contracts or proposals (or the purchase orders or commitment letters in the case of the Master Agreement) are received by the company at Office B and that this is the event that triggers the application and rate of Illinois and local ROT on the sale.

Therefore, we respectfully request that the Department issue a ruling that concludes that the Company is correct in its understanding of the application of the Illinois and local ROT to its business operations, as reflected in this private letter ruling request.

If the Department has additional questions, needs additional information or anticipates a negative response to this request, it is requested that the Department contact the undersigned first before a written response is given.

DEPARTMENT'S RESPONSE

We are unable to issue the rulings requested. Based upon the information presented, the Department cannot agree that the receipt by the Company at Office B of a customer's acceptance of the Company's signed sales contract or signed proposal at Office B conclusively establishes Office B as the situs of such sale for Illinois and local Retailers' Occupation Tax purposes such that the state and local tax rate in effect in City B applies to the sale. In addition, the Department cannot agree that the receipt of purchase orders or commitment letters at Office B that are related to the Master Agreements, conclusively establishes Office B as the situs of such sales for Illinois and local Retailers' Occupation Tax purposes.

As far as we can determine, in the case of single contracts, Office A performs the credit review, and once credit is approved, Office A prepares a fee quote and proposal letter outlining the details of the proposed transaction. The fee quote states that the terms of the proposal are subject to approval by the Company's senior management. If the customer agrees to the terms outlined in the proposal, the customer submits the signed proposal to Office A. Upon receipt of the signed proposal, the Company prepares a sales contract outlining the agreed terms of the transaction. The sales contract is then forwarded to an authorized member of the Company's senior management team. The senior manager reviews the contract, and if in agreement with the terms, signs the sales contract. The signed sales contract is then sent to the customer with the instruction that if the terms are acceptable, the customer must sign the contract and return it to Office B. The personnel in Office B receive the contract, log its receipt and forward the contract to Office A where the order is released and the equipment is ordered from the manufacturer for delivery to the customer.

In the case of master contracts, the signed Master Agreements are submitted by the customer to Office A where they are kept on file. Thereafter, when a customer under a Master Agreements wishes to acquire specific equipment, a quote or price list is provided. The customer then prepares a purchase order or commitment letter, referencing the Master Agreement and submits the purchase order to Office B. The purchase order or commitment letter is logged in as received and forwarded to Office A where the order is released for processing and billing.

The Department's regulation regarding jurisdictional questions for Home Rule Municipal Retailer' Occupation Tax purposes provides that "[f]or a seller to incur Home Rule Municipal Retailers' Occupation Tax liability in a given home rule municipality, the sale must be made in the course of such seller's engaging in the retail business within such home rule municipality. In other words, enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1).

Based upon your description of how orders are placed with the Company, it does not appear that Office B is involved in any selling activity other than being the location to which orders are mailed, logged in and forwarded to Office A. As was noted in our previous letter, receipt of an order is not necessarily acceptance. The Department's regulation at 86 Ill. Adm. Code 270.115 provides that "[t]he Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary." Because we are unable to conclude that enough of the selling activity is occurring at Office B to justify determining that Office B is where orders are actually accepted, we decline to issue the rulings requested. In addition, we are revoking the previous letter addressed to you on this subject (ST-00-0020-GIL), as it is not a full and complete explanation of the regulation.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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